



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[Docket No. USCG-2020-0056]

RIN 1625-AA09

### Drawbridge Operation Regulation; Fox River, Oshkosh, WI

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is amending the operating schedule that governs the Canadian National Railroad Bridge, mile 55.72, across the Fox River to operate remotely. The request was made by the bridge owner. This rule re-establishes remote operations of the bridge and will not change the operating schedule of the bridge.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2020-0056 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking (Advance, Supplemental)
§	Section
TD	Temporary deviation with request for comments
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

In 2010 we published a NPRM to solicit comments concerning allowing the Canadian National Railroad Bridge, mile 55.72 to operate remotely (75 FR 76322, December 8, 2010; USCG-2010-1029). The public requested the bridge owner to install and maintain additional warning lights. The NPRM was withdrawn because the railroad refused to install and maintain the additional warning lights the public requested (76 FR 13312, March 11, 2011). Recently, the Railroad has agreed that from April 27 through October 7 additional warning lights, specifically those alternating flashing red lights that mimic a Grade Crossing Signal commonly found at highway railroad crossing would be installed and maintained to warn mariners that the bridge was about to close. The remote operator shall also announce that the bridge is opening or closing on VHF-FM Marine Radiotelephone. The owners of the bridge shall maintain 2 board gauges in accordance with 33 CFR 118.160. The remote drawtender may be contacted by mariners at any time by radiotelephone or commercial phone number; this information shall be so posted on the bridge so that they are plainly visible to vessel operators approaching the up or downstream side of the bridge.

The current winter operating schedule requiring vessels to provide at least 12-hours advance notice for a bridge opening during the winter will remain in effect. Additionally, the clearance gauges would still be required to indicate to vessels the water levels and clearance while the bridge is in the closed position. During the comment period, a tender will be at the bridge to allow the public to observe the proposed bridge operations. We published an after the fact TD in the Federal Register (85 FR 54496) on

September 2, 2020, for a test schedule that ran from April 26, 2020, through September 2, 2020. Posting in the Federal Register was delayed due to COVID-19 but we supplemented the request with direct emails, Local Notice to Mariners, and internet based meetings platforms. No comments were received.

We published a NPRM in the Federal Register (86 FR 18925) that was published on April 12, 2021, and requested comments until June 11, 2021. We received one comment concerned with general safety at the bridge. The commenter predicted remotely operating the bridge would result in a higher risk of allision and collisions at the bridge along with increased delays for boaters. Most of the commenter's concerns were addressed in the TD and NPRM and no reports of mishap or allision was received during the TD. The commenter stated long delays at the bridge for vessels; however, the Coast Guard has not received any reports of delay in approximately five years.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. This rule will allow the bridge to operate remotely and it will not change the operating schedule of the bridge. The bridge will open on signal, except when ice forms in the waterway and vessels can request an opening if a 12-hour advance notice is provided.

### **IV. Discussion of Final Rule**

We carefully reviewed the comments and did not find good reason to alter the language as published in the NPRM.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protesters.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice in the winter and by signal all other times.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We did not receive any comments from Indian Tribal Governments.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security  
Delegation No. 0170.1.

2. Amend § 117.1087 by revising paragraph (c) to read as follows:

**§ 117.1087 Fox River.**

\* \* \* \* \*

(c) The draw of the Canadian National Railroad Bridge at mile 55.72 shall open on signal, except from October 8 through April 26; the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures to indicate the vertical clearance under the closed draw at all water levels. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream. The bridge shall operate and maintain a VHF-FM Marine Radio. In addition to the required bridge lights, the owner's shall install and maintain alternating red lights in a horizontal line that mimic grade crossing lights and bell to warn mariners that the bridge is lowering.

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M. J. Johnston,  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District.